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February 15, 2002

PATENT APPLICATION

Our Docket No. 20010483.COD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re App : Ronald O. Bubar

Serial No. : 09/535,067

Filed : March 23, 2000 : Art Unit 1761

For : LAMINATED PIZZA CRUST : Examiner T. Tran Lien

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Commissioner of Patents & Trademarks  
Washington, D.C. 20231

Sir:

Transmitted herewith is a Response in response to the Official Action dated December 17, 2001, in the above-identified patent application along with a Declaration of Jeno F. Paulucci Under 37 C.F.R. 1.132.

The Commissioner is hereby authorized to charge any fees listed in 37 CFR 1.16 and 1.17 which may be required by this paper or credit any overpayment to Deposit Account No. 08-1265.

No additional fee is required.

Yours very truly,

NIKOLAI & MERSEREAU, P.A.

  
Thomas J. Nikolai

TJN/acl  
Enclosures

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PATENT APPLICATION

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JW

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COMMISSIONER OF PATENTS AND TRADEMARKS  
WASHINGTON, D.C. 20231

Dear Sir:

RESPONSE

In Response to the first Official Action of December 17, 2001, submitted herewith is a further Declaration Under 37 C.F.R. 1.132 by Mr. Jeno F. Paulucci, the inventor named on U.S. Patent No. 4,842,882. It is submitted to substantiate and support the earlier Supplemental Declaration of Ronald O. Bubar, the inventor named on the above-captioned application, and dated November 27, 2001.

In the Office Action of December 17, 2001, the Examiner continued his rejection of claims 12-20 under 35 U.S.C. 103(a) as being unpatentable over the Paulucci '882 patent. The Examiner found Mr. Bubar's Declaration to be non-convincing because that Declaration did not state how the pizza crust of Exhibit 2 to the Bubar Declaration is made, i.e., whether it is made exactly in accordance with the method set forth in Example 6 of the Paulucci '882 patent.

In Mr. Paulucci's Declaration accompanying this Response, he testifies to his years of experience in the production of frozen pizza products and with the methods used by his company, both in the past, and presently, for producing baked pizza crusts. In particular, Mr. Paulucci avers that he is familiar with the product produced using the method of example 6 of his '882 patent, as well as with the product resulting when the

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method disclosed in the subject application is used to produce pizza crusts. Based upon this familiarity, and as stated in paragraph 3 of his Declaration, Mr. Paulucci has examined the photographs comprising Exhibits 1 and 2 to Mr. Bubar's Declaration of November 27, 2001, and he states that the photo of Exhibit 1 reflects the crust resulting from Mr. Bubar's method and Exhibit 2 reflects the crust resulting when the method of example 6 of his '882 patent is utilized.

Further, Mr. Paulucci testifies in his Declaration that he has read and understands the contents of Mr. Bubars's Declaration of November 27, 2001, and that it is true and correct in all respects. Based upon his knowledge and experience, Mr. Paulucci states that the term "pressed crust process" used by Mr. Bubar in his Declaration refers to the fact that the flakes of shortening are squeezed (pressed) into the dough during the two-sheeting steps called for in Example 6 of his '882 patent.

The Examiner need only scan the photographic exhibits to the Bubar Declaration to note the dramatic difference in texture in the "layered crust" product illustrated in the photo of Exhibit 1 from the "conventional bread crust" product reflected in the Exhibit 2 to the Bubar Supplemental Declaration. The pizza crust shown in the photo of Exhibit 2 has pores resembling what is seen in a cross section of a slice of white bread while the pizza crust illustrated in the photo of Exhibit 1 clearly show a definite flaky, laminated or layered consistency.

It is submitted that Mr. Paulucci's Declaration established that the photograph of Exhibit 2 is the result when a pizza crust is made in accordance with Example 6 of his '882 patent.

In the Official Action of December 17, 2001, the Examiner dismisses the adverment made in paragraph 10 of the Supplemental Declaration of Ronald O. Bubar stating "Whether such method is used or not used to produce the frozen pizzas is not a factor in determining the patentability of the instant claimed product." Applicant's attorney is sure that the Examiner is aware of the U.S. Supreme Court decision in *Graham v. John Deere*, 383 U.S.1 holding that "commercial success" is a consideration as an indicia of non-obviousness. The method of Example 6 of the Paulucci '882 patent was once used to produce pizza crusts at Luigino's Inc., but was discontinued in favor of the method described and claimed in the instant application. It goes without saying that a

company marketing a food product nationwide through grocery and convenience stores in a highly competitive market would not make such a basic process change unless to do so would result in an improved, more saleable product. As was pointed out in Applicant's Preliminary Amendment of November 28, 2001, Luigino's Inc. produces and sells thousands of frozen pizzas having the new crust each day. This is certainly evidence of commercial success that can be directly attributable to the present invention.

The Examiner is respectfully requested to consider the further showing provided by the accompanying Paulucci Declaration as it reflects on the earlier testimony of Mr. Bubar. It is submitted that the evidence presented and now of record in the present application overcomes the *prima facie* evidence of obviousness represented by the cited Paulucci '882 patent. Accordingly, a Notice of Allowance of claims 12-20 is respectfully requested.

Respectfully submitted,



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#### CERTIFICATE OF MAILING

I hereby certify that the foregoing Response consisting of three (3) pages, a Declaration of Jeno F. Paulucci Under 37 C.F.R. 1.132 (2pp.), a return receipt postcard for the application Serial No. 09/535,067 of inventor, RONALD O. BUBAR, filed March 23, 2000, for "LAMINATED PIZZA CRUST" was deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents & Trademarks, Washington, D.C. 20231, on Friday, February 15, 2002.



Anna Lemke  
On Behalf of Thomas J. Nikolai